

**DURHAM, NORTH CAROLINA
MONDAY, MARCH 6, 2006
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Absent: None.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

Council Member Woodard recognized the following Black History Essay Contest winners from Club Boulevard Elementary School: Teacher: Kathy Bumgardner and Principal Micah Copeland. Students: 1st grade – Marguerite Alley; 2nd grade – Jalon Redmond; 3rd grade – Zachary Balleisen; 4th grade – Shaniqua Mayo and 5th grade – Jordan McGhee.

Also, Council Member Wood recognized coordinators [Coaches Rebecca Small and Frederick Warsaw] and winners from the Science Decathlon held at Chewning Middle School:

Chewning Middle School

1st Place Robotics

1st Place Rocks & Minerals

3rd Place Chemical Observations

2nd Place Water Rockery

1st Place Crane fly

1st Place Ick Thyology (Fish)

1st and 3rd Place Moustrap Car

Michael Clifton, Farida Bori, Ronnie Perry, Dean Cates, Maria Rico, Antwoine Royal, Quentajia Small, Brian Honoree, Nikkida Perry, Noemi Ortega and Omar Jacinto.

Combination High School – Students won 3rd Place at National in Seattle

1st Place Tower Breaking

1st Place Water Rockery

1st Place Marine Biology

1st Place Ick! Thyology (Fish)

Amber Anderson, Carloa Penaloza, Ashley Anderson, Keiara Davis and Vanessa Small.

Hillside High School – Coach Mr. Edwards

2nd Place Tower Breaking

Aaron Brown, Bryan Alliaon, Marcus Mangum, Chris Bunn and Tejas Yerlagadda

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Mangum/Explorers – Coach Ada Glenn

1st Place Chemical Observations

3rd Place robotics

Jeffrey Glenn, John Adams, Campbell Johnson, Trevor Maunder and Andrew Wilkins

Mayor Bell presented James Soukup, Director of the Durham Emergency Communications Center, with an accreditation plaque for the period of 2005 - 2008 for achieving an international honor recognizing their achievement in providing emergency medical dispatch care.

Durham Emergency Communications Center Director James Soukup thanked his staff for their hardwork and willingness in achieving this accreditation and acknowledged Charles Brown for initiating the accreditation process and Chris Bradford a member of the National Academy of Emergency Medical Dispatch (NAEMD).

Chris Bradford, of NAEMD, noted it is a pleasure to be a part of this process and highlighted that in North Carolina there are over 87 users, but only three accredited centers with Durham becoming the third one; only 101 throughout the world.

Council Member Catotti congratulated the Durham Affordable Housing Coalition for a successful annual membership meeting and the Durham Community Land Trustees on their 19th anniversary celebration and fundraising reception.

Council Member Stith congratulated Pearisontown and Shenika Moore on their week-long focus on READING and commented on John Hope Franklin's book, *Mirror to America*.

Mayor Pro Tempore Cole-McFadden announced she participated in the after school program at Neal Middle School and congratulated Rita Alston Roberts for the great job she is doing with the students in this program.

Council Member Clement apologized for failing to mention Tonette Amos as one of the members of the Employee Recognition Committee, made comments on the performance by Nina Freelon at the Carolina Theatre, encouraged everyone to patronize the Carolina Theatre and commented on his upcoming participation at the Pearisontown Elementary School.

Mayor Bell thanked his Council colleagues and the people throughout Durham who have taken the time to spend with our young people in various capacities.

Mayor Pro Tempore Cole-McFadden requested an excused absence from the March 9, 2006 Work Session.

MOTION by Council Member Stith seconded by Council Member Catotti to excuse Mayor Pro Tempore Cole-McFadden from the March 9, 2006 City Council Work Session was approved at 7:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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Mayor Bell announced that he would be arriving late to the March 9, 2006 City Council Work Session and Council Member Clement will be chairing that meeting.

Mayor Pro Tempore Cole-McFadden requested that the agenda item relating to the Durham Housing Authority – Appointments be moved to the March 23, 2006 Work Session.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Clement to refer the Durham Housing Authority – Appointments to the March 23, 2006 Work Session was approved at 7:26 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. Relative to GBA #27 [Zoning Map Change – Goodwin Crossing -- Z05-31], City Manager Baker noted there is a request to defer this item and asked that this item be first on the agenda after the Consent Agenda.

MOTION by Council Member Catotti seconded by Council Member Stith to accept the City Manager's priority item was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

There were no priority items from the City Attorney.

City Clerk Gray informed Council of a valid protest petition filed against GBA #27 [Zoning Map Change – Goodwin Crossing [Z05-31].

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items 19 [Durham Bulls Athletic Park Cleaning Contract] and 21 [Taxi Cab Rate Adjustment] were pulled.

Relative to Consent Agenda Item #1 [2006 Legislative Program], Council Member Stith informed the City Clerk that he would be voting no on Item 4.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve the Consent Agenda as amended was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: 2006 LEGISLATIVE PROGRAM

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive a report from the Legislative Committee; and

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To approve the 2006 Legislative Program Outline was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Note: Council Member Stith voted no on Item 4 under the 2006 Legislative Program Outline (Short Session):

2006 LEGISLATIVE PROGRAM OUTLINE (SHORT SESSION)

I. CHARTER AMENDMENTS/LOCAL BILLS

1. Amend the City Charter to make the City's fair housing enabling authority equivalent to the State fair housing law on the question of organizational standing, such that fair housing organizations would be authorized to file fair housing complaints – from Human Relations Commission.

II. GENERAL LAW

There are no general law proposals for the 2006 short session.

III. CARRYOVERS

Other than the request for additional judicial resources for Durham County (see "Other #1 below), it does not appear that any of the items in the City's legislative program from last year remain eligible for consideration in the 2006 short session as a "carryover" item from the 2005 legislative session.

IV. OTHER

1. Resolution in support of Senate Bill 61 from the 2005 legislative session and the anticipated request of Durham County for increased funding from the General Assembly to meet the resource needs of the Durham County court system. This bill passed the House during the 2005 legislative session – from Mr. Brown.
2. Resolution in support of House Bill 50 from the 2005 legislative session, to enact the North Carolina Street Gang Prevention Act. This item was co-sponsored by Representative Michaux and passed the House during the 2005 legislative session – from City Manager.

V. ITEMS FOR CONSIDERATION FOR 2007 LEGISLATIVE PROGRAM

Several proposals have been received that the City Manager recommends for consideration in the 2007 legislative program. The City will be developing the 2007 program this fall prior to the next regular session of the General Assembly commencing in January. The proposals are as follows:

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1. Authorize municipalities to enact ordinances prohibiting discrimination in employment, housing and public accommodations, including necessary enforcement provisions – from Human Relations Commission and City Manager.
2. Adopt a resolution in support of statewide legislation to provide unreduced retirement benefits for law enforcement officers after 25 years of service – from Mr. Brown.
3. Lessen the negative impact of alcohol sales in local communities by changing the ABC laws to allow local governments and the ABC Commission additional authority to regulate establishments that sell or serve alcoholic beverages – from Mr. Clement.
4. Impose additional taxes on the sale of handgun ammunition – from Mr. Clement. **Vote 6/1 – Noes: Council Member Stith.**

VI. SUMMARY

Under the adjournment resolution approved by the General Assembly, noncontroversial local bills are eligible for consideration in the 2006 legislative session. In addition to the usual deliberations by the Legislative Committee on the merits of the legislative referrals, the Committee may wish to give some thought as to whether the proposed local bill is likely to be sufficiently noncontroversial to gain the necessary support of the local legislators.

SUBJECT: CITY COUNCIL MINUTES

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve City Council minutes for the February 6, 2006 regular City Council Meeting; and

To approve City Council action taken at the January 19, 2006 City Council work Session was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM OPEN SPACE & TRAILS COMMISSION – RECEIPT AND ACCEPTANCE OF APPLICATIONS

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive and accept applications for a citizen to fill one (1) vacancy on the Durham Open Space & Trails Commission for an At-Large Member with a term to expire on June 30, 2008 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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SUBJECT: MAJOR SITE PLAN AND PRELIMINARY PLAT – CHELSEA MEADOWS II (D05-718)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan and preliminary plat for “Chelsea Meadows II”, submitted by the John R. McAdams Company, Inc., on behalf of M/I Homes of Raleigh, LLC for 36 single-family residential lots and related infrastructure on a 14.56 acre site zoned PDR 2.48 and F/J-B, the property is located south of Massey Chapel Road and west of Fayetteville Road, PIN 0718-04-50-0207 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN – NORTH CAROLINA HAMMOCK COMPANY (D05-612)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan for North Carolina Hammock Company, submitted by Horvath Associates, PA, on behalf of North Carolina Hammock Company, to construct a 5,893 square foot commercial building on a 0.42 acre parcel, zoned CN and E-B, the site is located at 3107 and 3109 Guess Road on the west side of Guess Road, between Lombard Street and Kirk Road, PIN 0823-17-01-7677 and 0823-17-01-7762 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN AND PRELIMINARY PLAT – WESTON DOWNS (D05-334)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan and preliminary plat for “Weston Downs”, submitted by J. Davis Architects, PLLC, on behalf of Weston Downs, LLC for 75 single family residential lots and related infrastructure on a 37.004 acre site zoned PDR 2.1, F/J-B and MTC (partial), with a landscape variation for the street trees spacing where they conflict with utilities, the property is located east of Pope Road, south of Bakers Mill Road, north of Ephesus Church Road, PIN 0709-03-14-4460 (partial), 0709-03-13-3341 (partial), 0709-03-04-6848, 0709-03-04-6611, 0709-03-04-4493, 0709-03-04-6201, 0709-03-04-4221, 0709-01-05-6090, 0709-03-04-6957, 0709-01-15-3010, 0709-03-14-5927 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN AND PRELIMINARY PLAT – BELVINS PROPERTY (D05-433)

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan and preliminary plat for the “Belvins Property”, submitted by the John R. McAdams Company, Inc., on behalf of Millridge Investment Corporation for 221 single-family residential lots, clubhouse with pool and related infrastructure on a 90.86 acre portion of a 111.85 acre site zoned PDR 4.99 and F/J-B, the property is located south of Hebron Road and east of Danube Lane, PIN 0833-02-49-1423 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: STREET RENAMING – 1.178.11 LINEAR FEET OF BARNES AVENUE - (N06-01)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to set a public hearing for March 20, 2006 to consider the proposed renaming a 1.178.11 linear feet of Barnes Avenue (N06-01) was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN – SHEETZ CONVENIENCE STORE (D05-751)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan for “Sheetz Convenience Store”, submitted by Kimley-Horn and Associates, Inc., on behalf of Sheetz Incorporated, for a 5,484 square foot convenience store with gasoline sales, a single bay automatic car wash, 48 vehicle parking spaces and five bicycle parking spaces on a 2.264 acre site zoned CC, the property is located at 3021 South Miami Boulevard; the northeast corner of South Miami Boulevard and T.W. Alexander Drive, PIN 0749-04-51-6485 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN – RENAISSANCE IV – LOT 2 (D05-621)

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve a major site plan for “Renaissance IV – Lot 2”, submitted by the John R. McAdams Company, Inc., on behalf of Renaissance Retail, et al, for an 111,825 square foot retail building with 479 vehicle parking spaces and 28 bicycle parking spaces on a 14.11 acre portion of a 28.98 acre parcel zoned MU(D); MTC and F/J-B, the property is located at 7005 Fayetteville Road; on the east side of Fayetteville Road between Herndon Road and James Ross Drive, PIN 0718-04-83-8051 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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**SUBJECT: SETTING PUBLIC HEARINGS FOR THE CONFIRMATION OF
ASSESSMENT ROLLS - SIDEWALK ON CLERMONT ROAD (SOUTH
SIDE)**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt resolutions setting public hearings for March 20, 2006, for the following assessment rolls was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Sidewalk on Clermont Road (South Side) from Pelham Road to Grandale Drive; and

Sidewalk on Clermont Road (South Side) from Pelham Road to Euclid Road and Euclid Road (East Side) from Clermont Road to Revere Road and Blanchard Road (East Side) from Euclid Road to N.C. Highway 54.

**SUBJECT: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION UTILITY
AGREEMENT R-2904**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to adopt a resolution to reimburse the North Carolina Department of Transportation;

To authorize the City Manager to execute a utility agreement for the relocation of utilities along the widening of NC-54 from SR 1999 (Davis Drive) to SR 1959 (South Miami Boulevard); and

To authorize the expenditure of \$341,145.00 from the Water Extensions and Improvements Account for the relocation of the utilities was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9333

**SUBJECT: FORECLOSURE OF CITY SPECIAL ASSESSMENT, HOUSING
DEMOLITION AND NUISANCE CLEANUP LIENS - REINHARDT
MILAM LAW GROUP, PLLC**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a contract with the Reinhardt Milam Law Group, PLLC to perform foreclosure of delinquent City Special Assessment Housing Demolition and Housing Nuisance Abatement Cleanup Liens; and

To authorize the City Manager modify the contract provided that the modifications do not increase the dollar amount and the modifications are consistent with the general intent and purposes of the contract was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell,

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Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: INTEREST RATE LOCK FOR AMERICAN THEATER FOR THE PERFORMING ARTS

To adopt the resolution authorizing the execution and delivery of an interest rate swap agreement.

Note: This item was referred back to the administration – Finance Department.

SUBJECT: PROPOSED SALE OF 28 VACANT LOTS IN THE HILLVIEW TERRACE SUBDIVISION – JUSTICE STREEET, SHAY DRIVE, HANCOCK STREET, MELANIE STREET AND FELICIA STREET

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to declare the 28 parcels as listed on Exhibit A as surplus property;

To authorize the sale of the parcels via the Upset Bid Procedure (G.S. 160A-269);

If no upset bids are received, authorize the City Manager to accept D.R. Horton's offer of \$70,000 to purchase the 28 parcels as shown on Exhibit A with the condition that all 28 parcels are dedicated as greenway easements to the City; and

To authorize the Mayor to convey the property with a non-warranty deed was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

EXHIBIT A

Parcel ID	ADDRESS	Lot #	ACRES	City Tract #
177899	911Justice St.	# 9 B1 D	0.45	1735
177900	915 Justice St.	# 10 B1 D	0.449	1735
177901	919 Justice St.	# 11 B1 D	0.575	1735
177902	918 Shay Drive	# 23 B1 D	0.582	1709
177903	914 Shay Drive	# 22 B1 D	0.466	1730
177904	910 Shay Drive	# 21 B1 D	0.464	1710
177905	906 Shay Drive	# 19 B1 D	0.462	1711
177906	902 Shay Drive	# 18 B1 D	0.46	1712
177931	820 Hancock St.	# 17 B1 G	0.451	1715
177932	824 Hancock St.	# 18 B1 G	0.448	1716
177933	828 Hancock St.	# 19 B1 G	0.446	1717
177934	832 Hancock St.	# 20 B1 G	0.443	1718
177935	836 Hancock St.	# 21 B1 G	0.463	1706

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177936	840 Hancock St.	# 22 Bl G	0.456	1707
177937	919 Shay Drive	# 11 Bl G	0.479	1708
177938	915 Shay Drive	# 10 Bl G	0.51	1719
177939	911 Shay Drive	# 9 Bl G	0.468	1720
177955	908 Melanie St.	# 8 Bl I	0.686	1721
177956	912 Melanie St.	# 9 Bl I	0.694	1722
177957	916 Melanie St.	# 10 Bl I	0.702	1723
177958	920 Melanie St.	# 11 Bl I	0.706	1724
177959	843 Hancock St.	# 22 Bl I	0.488	1725
177960	839 Hancock St.	# 21 Bl I	0.466	1726
177961	835 Hancock St.	# 20 Bl I	0.465	1727
177962	831 Hancock St.	# 19 Bl I	0.465	1728
177963	827 Hancock St.	# 18 Bl I	0.464	1729
177964	823 Hancock St.	# 17 Bl I	0.463	1713
178001	812 Felicia St.	# 8 Bl K	0.425	1714
Total			14.046	

**SUBJECT: PROPOSED PURCHASE OF PARCEL 163518 TO IMPROVE ACCESS
AT BETHESDA PARK - CHRISTINE A. GOODWIN**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to approve the acquisition of 0.665 acre (Parcel ID # 163518) from Christine A. Goodwin for \$25,000 was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

**SUBJECT: CONTRACT FOR PROFESSIONAL SERVICES FOR RESURFACING
CONTRACT ADMINISTRATION - GREENHORNE & O'MARA**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Manager to execute a contract with Greenhorne & O'Mara for Street Resurfacing Contract Administration in an amount not to exceed \$400,000; and

To authorize the City Manager to modify the contract provided that the modifications do not increase the dollar amount and the modifications are consistent with the general intent of the contract was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: DURHAM WORKFORCE DEVELOPMENT BOARD ANNUAL REPORT

To receive a presentation on the Durham Workforce Development Board's Annual (DWDB) Report.

Note: A presentation was received at the February 23, 2006 Work Session.

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SUBJECT: DOWNTOWN DURHAM WAYFINDING SIGNAGE ON STATE-SYSTEM STREETS

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to receive a presentation on the Downtown Durham Wayfinding Signage on State-System Streets;

To endorse the Downtown Durham Wayfinding Program;

To adopt a resolution authorizing the City Manager to execute a Municipal Agreement with the NCDOT to install directional signage on State-system streets within the Downtown area and to accept funding not to exceed \$46,000 from the NCDOT for this project; and

To authorize the City Manager to make modifications to the agreement provided the modifications do not change the dollar amounts in the agreement and are consistent with the general intent of the version of the agreement approved by the City Council was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9334

SUBJECT: ISAAC WOODS

To receive comments from Isaac Woods regarding Forestdale Subdivision and the general construction license of himself and UFR, Inc.

Note: Comments were received at the February 23, 2006 Work Session.

SUBJECT: THE CITY'S PROPOSED USE OF THE 2006 EDWARD J. BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) FUNDS

To receive public comments on the City's proposed use of the 2006 Edward J. Byrne Memorial Justice Assistance Grant (JAG) Funds; and

To authorize the City Manager to execute an interlocal agreement between the County and City of Durham required for the submission of a joint application for the JAG award.

Note: This item was approved at the February 23, 2006 Work Session with a vote of 7/0.

SUBJECT: CONTRACT AMENDMENT - CONTRACT SR-30 EAST DURHAM OUTFALLS, PHASE I - R & R UTILITIES, INCORPORATED

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To authorize the City Manager to execute a contract amendment with R & R Utilities, Incorporated for Contract SR-30 East Durham Outfalls Phase I in the amount of \$200,000 for emergency sewer repairs; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract.

Note: This item was approved at the February 23, 2006 Work Session with a vote of 7/0.

[GENERAL BUSINESS AGENDA – PUBLIC HEARING]

**SUBJECT: ZONING MAP CHANGE – GOODWIN CROSSING - (Z05-31) –
CHARLES W. MITCHELL - 1207 AND 1312 GOODWIN ROAD, NORTH
OF INFINITY ROAD**

To conduct a public hearing on the zoning map change for Goodwin Crossing (Z05-31);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z05-31 out of RS-20 and placing same in and establishing same as PDR 2.84 with lots encroaching into the Transitional Use Area (TUA) (Section 4B.1.10), and with the effective date of this zoning request delayed until subdivision of parcels, to correspond to parcel boundaries of the zoning map (Section 15.2.1 of the Zoning Ordinance);

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; and

Alternatively, in the event that a motion to approve the item fails, the finding that has been approved by the Governing Body is

To adopt as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan and the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 8-5, based on consistency with the Comprehensive Plan and considering the information in the staff report and testimony provided at the public hearing.

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Note: Valid protest petition filed against zoning map change.

Mayor Bell opened the public hearing.

City/County Planning Director Frank Duke acknowledged he has received the required certifications regarding notices for this item and other public hearings on the agenda tonight and that there is a valid protest petition for this request. He noted the applicant requested that this item be deferred until April 3, 2006 City Council Meeting to allow an opportunity to meet with the neighborhood to see if issues can be resolved and staff is recommending approval of the deferral request.

The proponents did not speak at this time.

Opponents

James Arnold, of 5 Maere Court, spoke against this zoning map change. He noted residents do not oppose the idea of developing this property, but the way in which it is being proposed. He noted the residents oppose this change due to the size of the lots, mass grading and the quality of the homes. He noted Goodwin Crossing is compatible with the uses but is nowhere near the pattern of adjacent development. He stated there is no need to cram 179 homes into an area on postage stamp sized lots right next to a subdivision with lots the size of Briardale's lots. Also, he raised a concern with the setback issue and expressed concern with the discrepancy between what has been proposed in public meetings and what may actually be built on the lots. He noted the residents are proposing that the lots only be approved at twice the size they are in the current plan which would result in the following improvements: larger lots to eliminate the need for mass grading, to facilitate building the size and style of houses proposed, reduce traffic, reduce pressure on schools, higher price for the lots which would meet the needs of the land owner, less homes but a higher price per home to meet the desired bottom line of the builder and developer and to provide the same tax base for the city; reduction of fire hazard due to larger side setbacks; a subdivision similar to its neighbors and supported and promoted by these neighbors. [handout provided].

Jill Boy, of the Briardale Neighborhood, spoke in opposition to this zoning map change. She urged that no decision be made until the actual home values and size of lots are determined.

For clarification, City/County Planning Director Frank Duke noted the request would be to continue the public hearing without further advertising to the April 3, 2006 City Council Meeting.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to continue the public hearing on this item without further advertising to the April 3, 2006 City Council Meeting was approved at 7:49 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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[GENERAL BUSINESS AGENDA]

SUBJECT: SYNTHETIC FIXED RATE REFINANCING UPDATE

To receive a report from the Administration regarding the proposed Synthetic Fixed-Rate Refinancing transaction with Rice Financial Products Company, and

- (A) To reaffirm the requirements placed on the Swap transaction as approved by City Council in April of 2005, including the use of a triple A credit structure.

OR, in the alternative,

- (B) To authorize the City Manager to negotiate with Rice Financial Products Company to restructure the terms of the Swap transaction, including a credit rating of not less than double A.

City Manager Baker made comments on the latest memorandum regarding the synthetic fixed rate refinancing issue and gave an update on this item. He noted after Council approval of this item back in February 2005, staff was informed in June or July by the Rice Financial Products Company that they were unable to execute the transaction with triple A insurance on the transaction and the time to execute the deal has expired because we had one year from LGC approval which lapsed in early January 2006. He noted that staff has received a proposal from Rice regarding the leveraged swap transaction with double A insurance. It remains the City administration's recommendation that we not do a leveraged swap transaction at anything less than a triple A which was the original agreement between the city and Rice Financial Products.

He noted Rice has been asked to provide us with a transaction that takes the leverage out of the deal and that transaction would be executed as a double A insurance. Also, City Manager Baker discussed other municipalities who have used this transaction structure. He stated that he has been informed that Rice would consider providing the City with a non-leveraged swap transaction with a double A credit structure; therefore, staff's recommendation would be to refer this item back to the administration to pursue negotiations with Rice for a non-leveraged swap transaction including a credit rating of less than double A insurance.

Council Member Clement made comments on taking additional action at the March 20, 2006 City Council Meeting.

City Manager Baker informed Council that the administration will provide an update or proposal regarding this swap transaction at the April 20, 2006 Work Session.

Council Member Catotti made comments on the fee structure and noted the former item needed authorization for the city manager to retain PFM on a fee basis.

City Manager Baker made comments on the on-going relationship with PFM including a fee-based structure and stated he would not need to amend the current structure.

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Regarding alternative B, Council Member Catotti asked the City Manager if we were ruling out reviewing additional people.

City Manager Baker noted there is no set form that this has to be bided out by law it is simply a choice. He noted staff has spent significant time with this particular vendor and it is his recommendation to continue negotiations with Rice for a non-leveraged swap transaction.

Don Rice, of Rice Financial Products, noted his staff would be glad to work with the City on this transaction and commented on a \$4 million transaction that was closed today with the county in Florida.

Council Member Brown noted to drop the leveraged portion out of this transaction is a step in the right direction; however, he expressed concern with taking this step with Rice Financial Products. He noted why not open this up to competition, raised a concern with who would be the insurer since Rice has been turned down by Ambac, discussed the letter dated June 20 from Rice Financial Products asking the City to agree to not initiate, pursue or participate in any lawsuits against Rice in any way relating to or arising out of the City's decision to enter into the transaction. Further, he made comments on the December 8th memo from Rice concerning the West Basin Water District.

Finance Director Ken Pennoyer noted it is his understanding that there is a lawsuit involving Rice Financial and West Basin. He noted the third party insurer would be the Bank of New York as proposed by Rice.

Council Member Brown asked why Council could not determine the insurer.

Finance Director Ken Pennoyer made comments on the agency having a suitable rating.

Council Member Brown suggested that Ambac be consulted on this transaction and made comments on the civil litigation that Rice is involved with noting the administration should take this case into account. He suggested that there be no business with Rice until the West Basin case has been resolved since PFM, our financial adviser, has informed us Rice is probably the only swap dealer in our nation that is currently being sued by an elected board. Finally, he noted he has concerns about this, the company and tactics they took and we need to send this out for competition for the sake of our taxpayers.

Finance Director Ken Pennoyer noted he would provide information on who is satisfied with Rice's performance as requested by Mayor Pro Tempore Cole-McFadden.

Don Rice, of Rice Financial, addressed the critical analysis sent out by Council Member Brown, urged Council to call their customers and West Basin and made comments regarding his firm.

City Manager Baker noted staff's recommendation would be to negotiate with Rice Financial Products a non-leveraged swap transaction with the numbers and name of insurer to be determined and would provide an update at the next Council meeting and at that time Council

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could refer the matter back to the administration for further handling. Also, he made comments on the motions printed on the agenda and noted Alternative B outlines staff's recommendation.

For clarification, Council Member Catotti asked that the language of a non-leveraged swap transaction be added as part of the motion.

City Attorney Blinder noted the motion would be Alternative B with adding at the end including a non-leveraged swap transaction.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive a report from the Administration regarding the proposed Synthetic Fixed-Rate Refinancing transaction with Rice Financial Products Company, and

To authorize the City Manager to negotiate with Rice Financial Products Company to restructure the terms of the Swap transaction, including a credit rating of not less than double A and including a non-leveraged swap transaction was approved at 8:29 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Clement, Stith and Woodard. Noes: Council Members Brown and Catotti. Absent: None.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: SEWER MAIN ON GRANDALE DRIVE FROM SEDWICK ROAD TO NORTH PROPERTY LINE OF TAX MAP 531-1-10 – MINI ASSESSMENT ROLL – 5622 GRANDALE DRIVE - SHEILA M. MCLAMB

Assistant City Engineer Lee Murphy made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to find that the property of Sheila M. McLamb, identified as Tax Map 531-1-10C, PIN 0727-01-46-9300, 5622 Grandale Drive, has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$2,610.38 was approved at 8:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: WATER MAIN ON GRANDALE DRIVE FROM SEDWICK ROAD TO NORTH PROPERTY LINE OF TAX MAP 531-1-10 – MINI ASSESSMENT ROLL – 5622 GRANDALE DRIVE - SHEILA M. MCLAMB

Assistant City Engineer Lee Murphy made comments on this item.

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Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to find that the property of Sheila M. McLamb, identified as Tax Map 531-1-10C, PIN 0727-01-46-9300, 5622 Grandale Drive, has benefited from the water main improvement and to confirm the assessment in the original amount of \$1,610.66 was approved at 8:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: CORRECTION OF AN ERROR ON AN ASSESSMENT ROLL – 111 OAKMONT AVENUE - QUINTON AND OMEGA C. PARKER

Assistant City Engineer Lee Murphy made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to adopt a resolution for the correction of an error on the assessment roll for Water and Sewer Laterals on Oakmont Avenue from N.C. Highway 55 around loop to N.C. Highway 55 which grants full relief of the sewer lateral assessment against the property of Quinton and Omega C. Parker identified as Tax Map 555-5-11, 111 Oakmont Avenue was approved at 8:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: ZONING MAP CHANGE – ADVANCE AUTO PARTS - (Z05-24) – JR DEVELOPERS, LLC – NORTH SIDE OF NC54 AND EAST OF NC 751

To conduct a public hearing on the zoning map change for Advance Auto Parts (Z05-24);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z05-24 out of CN(D) and CG(D); F/J-B and placing same in and establishing same as CG(D); F/J-B; and

To adopt as support for its action on the above ordinance amendments the findings that the ordinance is consistent with the Comprehensive Plan and that the request is reasonable and in the public interest considering the determination and facts as set forth in the accompanying staff report

Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan and considering the information contained in this report.

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Planning Commission Recommendation and Vote: Approval, 12-1, based on consistency with the Comprehensive Plan and considering the information contained in the staff report and testimony provided at the public hearing.

City/County Planning Director Frank Duke briefed Council on the staff report. He noted the proposed development plan includes committed elements as outlined on page 2 of staff report to include a maximum of square footage, pedestrian connections and cross assess easements, series of roadway improvements to NC 54 and NC751 as well as Garrett Road. He noted this request is consistent with the Comprehensive Plan and staff is recommending approval and the Planning Commission recommended approval as well.

Mayor Bell opened the public hearing.

Proponent

Ron Horvath, representing the applicant, spoke in support of this item. He noted 1.1 acres will be dedicated right-of-way for the Garrett Road Extension and additional right-of-way along NC54. He provided Council with a revised design guidelines—developer would be able to use EFIS incorporated into the design.

Mayor Bell asked how this project fits regarding the request he made that all roads be in place before this project is opened.

City/County Planning Director Frank Duke noted this is a third part of the puzzle and all three have to come together in order for any one of them to move forward with the certificate of compliances. Also, Mr. Duke noted staff has reviewed the revision to the design guideline proffered by the applicant and this will conform to the requirements of the ordinance.

No one spoke in opposition to this zoning map change.

Mayor Bell closed the public hearing.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Clement to conduct a public hearing on the zoning map change for Advance Auto Parts (Z05-24);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z05-24 out of CN(D) and CG(D); F/J-B and placing same in and establishing same as CG(D); F/J-B; and

To adopt as support for its action on the above ordinance amendments the findings that the ordinance is consistent with the Comprehensive Plan and that the request is reasonable and in the public interest considering the determination and facts as set forth in the accompanying staff report was approved at 8:37 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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Ordinance #13229

**SUBJECT: ZONING MAP CHANGE – GERMAN AUTO CENTER - (Z06-01) – 1810
FAY STREET**

To conduct a public hearing on the zoning map change for German Auto Center (Z06-01);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-01 out of CN; F/J-B and placing same in and establishing same as CG; F/J-B; and

To adopt as support for its action on the above ordinance amendments the findings that the ordinance is consistent with the Comprehensive Plan and that the request is reasonable and in the public interest considering the determination and facts as set forth in the accompanying staff report.

Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 13-0, based on consistency with the Comprehensive Plan and considering the information contained in the staff report and testimony provided at the public hearing.

City/County Planning Director Frank Duke briefed Council on the staff report. He noted the request is consistent with Comprehensive Plan and staff is recommending approval and the Planning Commission recommended approval.

Mayor Bell opened the public hearing.

Proponent

Mohamed Ali, of 1810 Fay Street, noted he was present to answer questions.

No one spoke in opposition to the zoning map change.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to conduct a public hearing on the zoning map change for German Auto Center (Z06-01);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-01 out of CN; F/J-B and placing same in and establishing same as CG; F/J-B; and

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To adopt as support for its action on the above ordinance amendments the findings that the ordinance is consistent with the Comprehensive Plan and that the request is reasonable and in the public interest considering the determination and facts as set forth in the accompanying staff report was approved at 8:39 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Ordinance #13230

**SUBJECT: LAND USE PLAN AMENDMENT — HOPE VALLEY TOWN HOMES
(A05-19)**

To conduct a public hearing on the Hope Valley Townhomes Plan Amendment; and

To adopt a Resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Low Density Residential (4 DU/A or Less) to Low Medium Density Residential (4-8 DU/A).

City/County Planning Director Frank Duke briefed Council on the land use plan amendment. He noted staff is recommending approval and the Planning Commission also recommended approval.

Mayor Bell opened the public hearing.

Kenneth Spaulding, representing the applicant, spoke in support of the plan amendment.

George Stanziale, representing the applicant, made comments in support this plan amendment. He made comments on the work with the two surrounding neighborhoods.

Benson Mangum spoke in favor of this land use plan amendment.

No one spoke in opposition to this item.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Mayor Pro Tempore Cole-McFadden to conduct a public hearing on the Hope Valley Townhomes Plan Amendment; and

To adopt a Resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Low Density Residential (4 DU/A or Less) to Low Medium Density Residential (4-8 DU/A) was approved at 8:45 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

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Resolution #9335

[ITEMS PULLED FROM CONSENT AGENDA]

**SUBJECT: DURHAM BULLS ATHLETIC PARK CLEANING CONTRACT -
SPARKLE AND SHINE CLEANING SERVICES, INC.**

Mayor Pro Tempore Cole-McFadden made comments on the homeless population being involved in this item.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract with Sparkle and Shine Cleaning Services, Inc. to provide janitorial services at the Durham Bulls Athletic Park in the amount of \$473,567.20 for two (2) years beginning April 1, 2006 through September 30, 2007; and

To authorize the City Manager to modify the contract provided that the modifications do not increase the dollar amount and the modifications are consistent with the general intent of the contract was approved at 8:48 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: TAXI CAB RATE ADJUSTMENT

Council Member Stith expressed concern about the impact this surcharge would have on our economically challenged population, especially the elderly on fixed income.

Transportation Manager Mark Ahrendsen addressed how the notification process would be handled concerning this item.

MOTION by Council Member Clement seconded by Council Member Woodard to adopt an Ordinance Amending Section 106 of the Passenger Vehicle for Hire Ordinance by establishing a fuel surcharge was approved at 8:50 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement and Woodard. Noes: Council Member Stith . Absent: None.

Ordinance #13228

[GENERAL BUSINESS AGENDA – PUBLIC HEARING]

**SUBJECT: MERCHANDISE-BASED IMPROVEMENT PROJECT APPLICATION
FOR C & T FLOORING AND INTERIOR DESIGN, INC.**

To receive public comments on the Merchandise-Based Improvement Project Application;

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To authorize the City Manager to execute a contract with C & T Flooring and Interior Design, Inc. for the Merchandise-Based Improvement Project in the amount of \$5,595; and

To authorize the City Manager to modify the contract provided that the modifications do not increase the dollar amount and the modifications are consistent with the general intent of the contract.

Alice Sharpe, of the Office of Economic & Employment Development, made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the Merchandise-Based Improvement Project Application;

To authorize the City Manager to execute a contract with C & T Flooring and Interior Design, Inc. for the Merchandise-Based Improvement Project in the amount of \$5,595; and

To authorize the City Manager to modify the contract provided that the modifications do not increase the dollar amount and the modifications are consistent with the general intent of the contract was approved at 8:52 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

[GENERAL BUSINESS AGENDA]

SUBJECT: CAPITAL PROGRAM ADVISORY COMMITTEE - APPOINTMENTS

To appoint citizens to fill three (3) vacancies on the Capital Program Advisory Committee with terms expiring on January 31, 2008.

Note: At the Work Session on February 23, 2006, the following citizens were appointed: Representing PAC 3- Keith D. Burns, representing PAC 4- Harold Lee Chestnut, representing PAC 5- Charles D. Watts, Jr., representing Financial Management- Wesley Christopher, representing Engineer – Ronald Horvath and representing Project Management – Susan Shaw.

By ballot, City Clerk Gray noted Council appointed the following: Thomas M. Poole (PAC 1) received five votes; Maryann B. Crea (PAC 2) received four votes and Patrick L. Byker (Project Management) received four votes. Also, she requested that the Committee terms expire in March rather than January and that they be staggered.

Council Member Woodard asked the City Clerk to address how the terms would be staggered.

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City Clerk Gray noted the term would expire in 2008 for five members and in 2007 for four members.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to authorize the City Clerk to stagger the terms of the membership and to allow terms to expire in March rather than January for the Capital Program Advisory Committee was approved at 8:54 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

There being no further business to come before the City Council, the meeting was adjourned at 8:54 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk